

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 1 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAVEDALI KASAMALI KURESHI

Versus

STATE OF GUJARAT

Appearance:

MR DP KINARIWALA for Petitioner

Mr K P Raval, APP for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 18/01/97

ORAL JUDGEMENT

Rule. Mr K P Raval, learned APP waives service of notice of Rule on behalf of the repondents.

This Criminal Revision Application under section 397 of the Cr.P.C. has been filed by Javadali Kasamali through his Power of Attorney holder Hasambhai M Kureshi, resident of Jamalpur, Panch pipali, Ahmedabad. The petitioner seeks direction to quash and set aside the

order Annexure 'D' dated 17.12.1996 passed by the learned Judicial Magistrate First Class, Gandhidham, Kutch. He seeks further direction to the Police Officer, Kandala Police Station to hand over the custody of vehicle No.GJ-1-5728 to the present applicant.

2. The say of the applicant is that Javedali Kasamali is the owner of Maruti Omani bearing Number GJ-1-5728. The said vehicle was seized by the Kandala Police Station in connection with Cr.No.I-50/96. The petitioner is not an accused in the said case. An application was filed by the petitioner under section 451 of the Cr.P.C. before the learned Judicial Magistrate First Class, Gandhidham and the same came to be allowed by order dated 7.12.1996. The learned Magistrate directed that the vehicle may be delivered to Javedali Kasamali on the conditions mentioned therein. Thereafter, the applicant filed an application Exhibit 113 through his Power of Attorney holder Hasambhai M Kureshi stating inter alia that Javedali Kasamali is physically handicapped and he is using the vehicle with the help of driver and as such a power of attorney has been executed in favour of Hasamali Kasamali and the vehicle may be delivered to the said Hasamali Kasamali. This application was rejected by the learned Magistrate on the ground that he has passed order with respect to the delivery of vehicle by order dated 7.12.1996 and he has no jurisdiction to modify the said order.

2. I have heard the learned Advocate and the learned APP. To me the reason given by the learned Advocate for the applicant in his application that he is physically handicapped, and therefore, it may not be possible for him to travel from Ahmedabad to Gandhidham for taking delivery of the vehicle appears to be convincing. In view of this, the order of the learned Judicial Magistrate dated 7.12.1996 requires to be modified. However, it will not be possible for this Court to scrutinise the power of attorney and the genuineness of the same. In view of the aforesaid, the order of the learned Judicial Magistrate dated 7.12.96 and 17.12.96 are set aside. The Learned Magistrate is directed to pass fresh order keeping in view the application Exh.13 and the observations made above.

3. In view of the aforesaid, this Criminal Revision Application is allowed. Rule made absolute to the aforesaid extent.

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